

IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(CRIMINAL MISCELLANEOUS JURISDICTON)

Criminal Miscellaneous Case No. 6644 of 2017

IN THE MATTER OF:

An application under section 561A of the Code  
of Criminal Procedure

AND

IN THE MATTER OF:

Abdul Latif Tipu, son of late Alhaj Abdul Mannan  
of 82, J, I, Madrasa Shorok, Dumpara, Police  
Station-Kotwali, District-Chittagong

.....Accused-Petitioner

Versus

The State and another

.....Opposite Parties

Mrs. Fatema S. Chowdhury, Advocate with  
Mr. A.F.M. Saiful Karim, Advocate

.....For the Accused-Petitioner

Mr. Farid Uddin Khan, D.A.G. with  
Mr. Md. Anichur Rahman Khan, D.A.G.,  
Mr. Md. Shahadat Hossain Adil, A.A.G.,  
Mr. Rezbaul Kabir, A.A.G.,  
Mr. Sultan Mahmood Banna, A.A.G. and  
Mr. Md. Azadul Islam, A.A.G.

.....For the Opposite Party No. 1

Mr. Md. Mizanul Hoq Chowdhury, Advocate with  
Mr. Hasan Muhammad Reyad, Advocate and  
Mr. Habibur Rahman Rokan, Advocate

.....For the Opposite Party No. 2

Present:

Mr. Justice Md. Iqbal Kabir

And

Mr. Justice Md. Riaz Uddin Khan

Judgment on 04.12.2024.

Md. Iqbal Kabir, J:

On an application under section 561A of the Code of Criminal Procedure, this Rule was issued calling upon the opposite party to show cause as to why the proceedings of Complaint Register Case No. 348 of 2016 under Section 420 and 406 of the Penal Code, now pending before the Chief Metropolitan Magistrate, Chittagong shall not be quashed and/or such other or further order or orders passed as to this Court may seem fit and proper.

Facts leading to this application in short is that the present opposite party as complaint filed the instant C.R. Case before the Metropolitan Magistrate, Chittagong alleging inter alia that the accused-petitioner and the complainant opposite party both are cousins, the complainant opposite party showed his interest to get into a business deal with accused-petitioner as accused was a reputed businessman. On 10.09.1999 they entered into a partnership agreement and the complainant's opposite party invested an amount of Tk. 6,62,440/- (Tk. six lac sixty-two thousand four hundred and forty) with the alleged partnership business. During the partnership business accused petitioner purchased 8 Kani land with the profit of their business and thereafter the said land was sold by the accused vide register agreement No. 16123 dated 03.10.2011 and received an amount of Tk. 12,50,00,000/- (Tk. twelve crore fifty lac). By such a deal made a profit of Tk. 6,52,75,000/- (Tk. six crore fifty-two lac seventy-five thousand) after all necessary expenses; thereafter, an amount of Tk. 16,29,040/- (Tk. sixteen lac twenty-nine thousand forty) has been paid to the complainant opposite party and also promised to pay the rest amount of Tk. 3,10,08,460/- (Tk. three core ten lac eight thousand four hundred sixty) later on. However, at one stage by a notice dated 04.09.2012 complainant opposite party

demanded a remaining amount of profit, upon receiving the notice the accused-petitioner denied the allegations made therein vide its reply dated 26.09.2012. Again on 29.09.2012 both parties sat to resolve the dispute but the accused petitioner denied all; the complainant opposite party filed a case being No. 2580/2012 dated 20.11.2012 under section 420/406 subsequently, by an application dated 10.08.2014, the complainant opposite party withdrew the case based on a verbal commitment made by the accused petitioner in front of the local commissioner. But the dispute was not settled among them, hence the complainant initiated the instant case.

In the course of time, following the procedure, the court below took cognizance of the offense under section 406/420 of the Penal Code and issued a summons upon the petitioner to appear to the Court. The accused petitioner surrendered before the Court and obtained bail.

The accused petitioner filed an application under section 241A of the Code of Criminal Procedure for discharging him from the charge which was heard by the trial Court on 01.01.2017. However, the Court below rejected the application filed under section 241A of the Cr.P.C and framed charge against the accused petitioner under section 406 and 420 of the Penal Code.

Mrs. Fatema S Chowdhury, the learned Advocate for the petitioner submits that the allegation made in the complaint petition is entirely civil in nature and does not disclose any offence as alleged. She submits Court below most mechanically framed charge against the accused petitioner which is a clear abuse of the process of law. She claims it is a well-settled principle of law that a mere breach of contract cannot be treated as a breach of trust and therefore, the impugned proceeding is sheer abuse of the process of the law which is liable to be quashed to secure the ends of justice. According to

her, there are no ingredients of offenses alleged to be committed by the accused petitioner in the complaint petition and as such the impugned proceeding, being the abuse of the process of law is liable to be quashed.

However, in support relied on the case of *Nasiruddin Mahmud and others Vs. Momtazuddin Ahmed and another*, reported in 1984 BLD (AD) 97, that the question arose as to whether the partner can be charged by his co-partner with an offence for the breach of trust and cheating under section 406/420 of the Penal Code in respect of partnership business entrusting the money for the purpose, wherein it was held reviewing the decisions on the subject that a partner could not be alleged to be misappropriated or cheated is neither partner when an amount was entrusted to the accused for the partnership business.

She also brought notice similar view has been taken in the case of *Md. Yameen and another Vs. K.A. Bashir and others*, reported in 6 BLD (1986) (AD) 305 and the issue was as to whether the managing Director and Chairman of a company, the trustees of the fund of the company could be prosecuted for misappropriation of the fund of the company, and as to whether the principle of law applicable to the members of the partnership shall apply to the private limited company for the proposition that the directors of the company are trustees of the money of the business in their hands and control and they could not be prosecuted for misappropriation of fund and cheating the other directors and accordingly, the prosecution against one director by another for alleged misappropriation and cheating was quashed.

Mr. Md. Mizanul Hoq Chowdhury, the learned Advocate for respondent No. 2 filed an affidavit of facts stating that the local councilor was engaged as a sole arbitrator at the instance of the

accused petitioner and opposite party No. 2. But subsequently accused petitioner refused to negotiate and or co-operate with the local councilor. Such activities indicate accused is liable for such transactions, thus, criminal liabilities have occurred.

We have perused the application, considered the submissions made by the parties, and also considered the facts and circumstances of the case.

On perusal, it appears that the accused-petitioner and the complainant opposite party both are cousins. The complainant's opposite party and accused petitioner entered into a partnership agreement on 10.09.1999 and invested an amount for business. Subsequently, with the profit of the joint business, they purchased land and it was sold by the petitioner who received an amount of Tk. 12,50,00,000/- (Tk. twelve crore fifty lac) excluding all expenses Tk. 6,52,75,000/- (Tk. six crore fifty-two lac seventy-five thousand) remained as profit, out of the alleged amount accused given an amount of Tk. 16,29,040/- (Tk. sixteen lac twenty-nine thousand forty) to the complainant's opposite party and promised to pay the rest amount of Tk. 3,10,08,460/- (Tk. three crore ten lac eight thousand four hundred sixty), but that was not paid to the opposite party.

From the above, it is clear that they are partner in a business. Alleging dispute relates to the breach of trust and cheating opposite party claims it has fallen under section 406/420 of the penal code. Thus, the question arose as to whether the partner can be charged by his co-partner with an offence for the breach of trust and cheating fall under section 406/420 of the Penal Code in respect of partnership business entrusting the money for business.

In this context, the facts and circumstances of the cited decisions noted above apply to all forces in the instant case and

there is no room to differ the same. Accordingly, we find merit substance in the submissions of the learned Advocate for the petitioner.

In a result, the Rule is made absolute.

The proceedings of complaint Register Case No. 348 of 2016 under sections 420 and 406 of the Penal Code, now pending in the Court of learned Chief Metropolitan Magistrate, Chittagong are hereby quashed.

There will be no order as to cost.

Communicate the order.

Md. Riaz Uddin Khan, J:

I agree.